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TRANSCRIPT OF PROCEEDINGS

JUL - 2 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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6 IN RE APPLICATIONS OF:
7 C. DEVINE MEDIA, INC.
8 Ogden, Utah
9 STREET STRYDER
10 Spanish Fork, Utah
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MM DOCKET NO. 93-56

24 DATE OF CONFERENCE: June 17, 1993
25 PLACE OF CONFERENCE: Washington, D.C.

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION JUL - 2 1993
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

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4 In Re Applications of:)
5 C. DEVINE MEDIA, INC.)
6 Ogden, Utah)
7 STREET STRYDER)
8 Spanish Fork, Utah)
-----)

MM Docket No. 93-56

10 The above-entitled matter came on for a pre-hearing
11 conference pursuant to notice before John M. Frysiak,
12 Administrative Law Judge, at 2000 L Street, N.W., Washington,
D.C., on Tuesday, June 17, 1993, at 9:00 a.m.

13 APPEARANCES:

14 On behalf of C. Devine Media, Inc.:

15 AARON SHAINIS, Esquire
16 Shainis and Peltzman
1255 23rd Street, N.W.
Suite #500
Washington, D.C. 20037

17 On behalf of Mass Media Bureau:

18 Y. PAULETTE LADEN, Esquire
19 2025 M. Street, N.W.
Washington, D.C. 20554

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25	Conference Began: 9:00 a.m. Conference Ended: 9:20 a.m.

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P R O C E E D I N G S

(9:00 a.m.)

1 JUDGE FRYSIK: This is a prehearing conference for
2
3 MM Docket No. 93-56. May we note your appearances?

4 MR. SHAINIS: For C. Devine Media, Aaron Shainis.

5 MS. LADEN: For the Chief of the Mass Media Bureau,
6 Paulette Laden.

7 JUDGE FRYSIK: No appearance for Street Stryder. I
8 guess for our consideration today we simply have the
9 outstanding motion -- to ask for a continuance of the
10 procedural case. The Bureau opposes the motion made by the
11 applicant, but the applicant hasn't considered or mentioned
12 anything concerning the forfeiture. How does that affect this
13 case?

14 MR. SHAINIS: Your Honor, you'll attribute this with
15 a forfeiture. I don't believe if the state of this matter is
16 held pursuant to the distress sale, then I think the
17 forfeiture is obvious. I don't think that the, the distress
18 sale conference in addition to their being -- that, that type
19 of sanction, taking 75 percent of appraised value in addition
20 to that, having a forfeiture. I think if we went to hearing
21 on this, and if you felt that -- denial of renewal would not
22 be appropriate, then an alternate remedy would be the
23 forfeiture.

24 JUDGE FRYSIK: What's the Bureau's position?

25 MS. LADEN: Your Honor, I don't think that the

1 question has ever come up and I'm not prepared to say that we
2 could not pursue the forfeiture if there were a distress sale.
3 As a practical matter, however, I would be very surprised if
4 the Commission pursued a forfeiture if there were a distress
5 sale. I think the procedures under the new forfeiture
6 procedures -- I think the procedure is that the matter is
7 referred to the Commission. I don't think the Bureau would
8 make the decision, but, but again I would be very surprised if
9 a forfeiture were issued in addition to a distress sale.

10 JUDGE FRYSIK: How realistic is your distress sale?

11 MR. SHAINIS: Well, when you say realistic meaning
12 how bona fide is it -- the intention. because --

1 a difficult time to find a minority purchaser.

2 JUDGE FRYSIK: What's your status with Street
3 Stryder?

4 MR. SHAINIS: Excuse me?

5 JUDGE FRYSIK: What is your status with Street
6 Stryder?

7 MR. SHAINIS: What do you mean, status?

8 JUDGE FRYSIK: Well, what connection do you have?
9 Do you have any connection?

10 MR. SHAINIS: No.

11 JUDGE FRYSIK: Because that request of three
12 months --

13 MR. SHAINIS: Yes. They -- what Stryder filed, Your
14 Honor, were comments on our motion. And essentially Stry-- if
15 I read it correctly, Stryder said they would support three
16 months and if -- which revisited -- if at the end of three
17 months an application was not on file or close to being filed,
18 at that point the suggestion was that -- to revisit it and
19 hopefully have more time. I think that's, that's the
20 interpretation I have. Is that your interpretation?

21 MS. LADEN: That's not my interpretation exactly.
22 The first part, I think, is correct. I'm not -- I don't agree
23 that the, that the motion anticipates that after three months
24 then there would be an automatic further extension.

25 MR. SHAINIS: I didn't say automatic. I said revisited.

1 MS. LADEN: I, I think it does contemplate that, but
2 -- and, and I should say because we have not had an
3 opportunity because of the pleading cycle to comment on the
4 comments. Our concern and our opposition was two-fold.
5 First, that the time was too long and second that, that -- we
6 had a problem with having a partial distress sale. Having one
7 applicant have a distress sale and the applicant -- the other
8 applicant not. So since the Street Stryder motion
9 contemplates that both applicants would have a distress sale,
10 we would not object to a reasonable amount of time under those
11 circumstances. And three months does not seem unreasonable,
12 but we think that the period of time that has been requested
13 by Devine is too long. Perhaps the answer is to revisit it in
14 three months, but, but at that point, Your Honor, I think we
15 would object to a further extension unless there's some
16 concrete showing of efforts that have been made or, or, or how
17 far the distress sale -- I mean, identification of a buyer
18 perhaps. Some concrete steps towards a distress sale. I
19 don't think we should delay this indefinitely because of -- in
20 order to search for a buyer.

21 JUDGE FRYSIK: Has Street Stryder made a motion for
22 a distress sale?

23 MR. SHAINIS: No, Your Honor. What was filed by
24 Stryder, and I assume you received a copy, were comments and
25 partial support of motions of -- of my motion for a

1 | continuance of procedural dates. And in that motion, he
2 | stated on page 2, I was going to put in a request for further
3 | extension at the appropriate time -- like Devine -- I'm sorry.
4 | Hold up -- however, I support. I'm sorry. Let me, let me --
5 | however, I support only a three-month continuance until
6 | September 3rd, 1993, rather than the six-month suspension date
7 | requested by Devine. Should three months prove too short a
8 | time period to complete and file the distress sale
9 | applications, I will join in a request for a further extension
10 | at the appropriate time.

11 | JUDGE FRYSIK: Well, he does say in the -- that
12 | he's about to file a motion.

13 | MR. SHAINIS: I don't, I don't believe he says that.
14 | I believe what he states is that it is his intention to file a
15 | distress sale application to assign the -- to a licensed or
16 | qualified minority owner pursuant to the Commission's 1978
17 | distress sale policy statement. The contemplation -- that's
18 | the same contemplation my client has, however, to the best of
19 | my knowledge, neither party has, has a buyer who has signed an
20 | agreement.

21 | JUDGE FRYSIK: Well, Mr. Shainis, I think why -- I
22 | can accede to a three-month extension, with monthly reports.
23 | Okay?

24 | MR. SHAINIS: All right.

25 | JUDGE FRYSIK: But I would like for the, the matter

1 of the forfeiture clarified. The Bureau should take a
2 position and inform me of how it stands in the event of a
3 distress sale.

4 MS. LADEN: We'll do that, Your Honor.

5 MR. SHAINIS: Your Honor, are you asking the Bureau
6 to say, say whether -- even with the distress sale, you would
7 have to -- or you would have to consider imposing a
8 forfeiture? Or recommending a forfeiture?

1 | primarily involve the Bureau, in order -- the Commission's
2 | resources not have to be taxed. Specifically, we're
3 | contemplating -- because a distress sale does not involve an
4 | adjudication on the merits one way or the other, or the
5 | issues, and quite frankly my client may be interested at some
6 | future date in getting back involved in broadcasting. He
7 | would have issues left unresolved. At the present time, while
8 | memories are clear, we are contemplating taking some limited
9 | depositions.

10 | MS. LADEN: Your Honor, we -- I have to object to
11 | that. It seems to me Devine can't have it both ways. He has
12 | not responded to our discovery request. That response is
13 | late. I know they have taken the position that they didn't
14 | need to respond to my discovery request, because they had
15 | filed this motion and this motion was pending. He can't have
16 | it both ways. He's going to engage in discovery, but he's not
17 | willing to respond to it. He's for discovery.

1 | that, that's unfair.

2 | JUDGE FRYSIK: Well, who would you depose?

3 | MR. SHAINIS: Your Honor, the contemplation would be
4 | that we would just depose Steve Evans, Street Stryder,
5 | employees of the station at the time.

6 | MS. LADEN: Your Honor --

7 | MR. SHAINIS: And these depositions would not be
8 | taken in Washington. Obviously, the Bureau would have a right
9 | to attend if the Bureau wanted to, but I suspect the Bureau
10 | would not.

11 | MS. LADEN: Your Honor, it's -- Mr. Shainis has no
12 | way of knowing what the Bureau's going to decide to do with
13 | the deposi-- whether to attend the depositions or not, any
14 | more than I do. Secondly, we would have to review the
15 | deposition transcripts, and I think what's happening here is
16 | that Devine is trying to use this procedure to establish a
17 | record so that he can later on use this record to get back
18 | into broadcasting. That's not how the distress sale procedure
19 | works. The reason there's no resolution on the merits on a
20 | distress sale is because it conserves resources and we never
21 | go to hearing. I don't think we can use this, this proceeding
22 | in order to build up a record. He either intends to go with a
23 | distress sale or he intends to go to hearing. I don't think
24 | they can have it both ways. If he intends to go with a
25 | distress sale, we're willing to concede -- we're willing to

1 consent to a short extension of procedural dates, but we are
2 certainly not going to -- are not willing to allow him to
3 pursue both avenues at the same time and engage in discovery
4 while at the same time stating an intention to go with a

1 set for August. He's asking for a continuance of all dates,
2 so that we start the clock ticking again sometime in November
3 and in the meantime he continues to prosecute the case. We
4 don't know whether we should continue to prosecute the case or
5 prepare the case for hearing. He's asking for a continuance
6 while apparently now withdrawing his election at this time to
7 go distress.

8 MR. SHAINIS: Your Honor --

9 MS. LADEN: There's no basis for a continuance if he
10 is not going to elect to go distress until the day of the
11 hearing, then I would strenuously object to any continuance.
12 Then let's to go the hearing and we'll wait till then.

13 MR. SHAINIS: Your Honor, all I was trying to do --
14 I would like to leave my continuance motion in place as I said
15 to Ms. Laden, if we decide to pursue discovery, and I don't
16 think that's abusive of the process at all. I think they have
17 a right to find out the case that is against us and the
18 documents so far are, are not helpful in understanding the
19 full extent of the case. If we decide to pursue that then, so
20 that it's fair, we would respond to your interrogatories as
21 well as to -- interrogatories --

22 JUDGE FRYSIK: I guess the Bureau's position is is
23 that you're too conditional. They would like something
24 concrete.

25 MR. SHAINIS: Well --

1 MS. LADEN: Before we can support a continuance,
2 Your Honor, now he doesn't have to say anything concrete until
3 the day of the hearing, but he's asking Your Honor to grant a
4 continuance of all procedural dates and while the continuance
5 is in place he continues to engage in discovery. The
6 continuance is only going to apply to other people. It's only
7 going to apply to the date -- to the hearing dates, the
8 exchange dates, the dates that Your Honor was about to set
9 here this morning. He, he wants to continue to discover his
10 case while the continuance is in place. My position is he
11 can't have it both ways. If he wants a continuance fine.
12 We're willing to consent to it, but that means a continuance
13 of all activity. He doesn't engage in discovery and I don't
14 engage in discovery.

15 JUDGE FRYSIK: All right. Okay. If I were to
16 grant a three-month extension, how much time would you then
17 require for discovery?

18 MS. LADEN: I'm finished with my discovery. All I
19 need is the response. I have not received my -- responses to
20 my dis-- as far as I know at this point, I don't want to say
21 I'm finished. Since we have not received any responses at all
22 from Devine, there may be further discovery once I see those.
23 So, I need time to look at that discovery and I need time
24 perhaps to file some further motions. But at this point, I
25 have begun my discovery. They have not begun theirs. And as

1 I said, I'm willing to agree to a, to a continuance for a
2 reasonable amount of time and stopping the clock on
3 everything, but I'm not willing to agree to a partial
4 continuance where he gets to decide whether he's going to
5 engage in discovery and only if he does, then I have a right
6 to my answers and if he doesn't, I don't. I don't, I don't
7 think he should call the shots on that. He's asking Your
8 Honor to, to issue an order granting a continuance and that's
9 fine. But then Your Honor should continue all dates and all
10 procedures. If he wants to proceed with the rights -- he does
11 have a right to discover the case. He doesn't have a right to
12 get a continuance of all dates simultaneously. He does not
13 have a right to do that. If he wants to withdraw his motion
14 for a continuance, fine, we'll go forward with discovery. But
15 I don't think he can have it both ways.

16 MR. SHAINIS: Your Honor, I will leave a motion for
17 continuance in place.

18 JUDGE FRYSIAK: You will what?

19 MR. SHAINIS: I will leave the motion in place. I'm
20 not withdrawing it.

21 JUDGE FRYSIAK: All right. Well, okay. My
22 consideration here, I think, is what I'm -- I'm inclined to
23 agree with what the Bureau is saying and I will -- I could
24 accede to a three-month extension. I just don't know how much
25 time to give you after that for discovery.

1 MR. SHAINIS: Well, if we do not have an application
2 on file by the end of three months, pursuant to the distress
3 sale policy, I suggest that we have a conference at that point
4 and then set dates.

5 JUDGE FRYSIK: Well, that's my inclination too. We
6 can take it from there. Okay. I will grant your motion for a
7 continuance and I'll give you an extension for three months,
8 at which time we will then meet to decide further procedural
9 dates -- for further consideration. We are presently
10 scheduled for a hearing on the 24th of August, so we could
11 meet the 24th of November, the day before Thanksgiving. All
12 right?

13 MS. LADEN: Your Honor is granting the continuance
14 until November?

15 JUDGE FRYSIK: Pardon?

16 MS. LADEN: Your Honor is granting the continuance
17 until November?

18 JUDGE FRYSIK: Till November 24th.

19 MS. LADEN: Yeah, because we had -- we, we, we would
20 oppose that long, Your Honor. We consented to an extension
21 till the beginning of September. But the end of November, in
22 our opinion, is too long. I didn't want to create the
23 impression that we consented to that length of time. When I
24 spoke of three months, I was speaking from today, not from the
25 date of the hearing, Your Honor. So I would prefer -- I would

1 suggest that we have a conference in September, the early part
2 of September.

3 JUDGE FRYSIAK: Well, Mr. Shainis will be required
4 to file monthly reports.

5 MR. SHAINIS: That is correct, Your Honor.

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

APPLICATIONS OF C. DEVINE MEDIA, INC., et al.

Name

MM DOCKET NO. 93-56

Docket No.

WASHINGTON, D.C.

Place

JUNE 17, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 16, inclusive, are the true, accurate and complete transcript prepared from the reporting by SOL KRASNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

June 25, 1993

Date


Martha K. Conner, Transcriber
Free State Reporting, Inc.

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